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TELECOMMUNICATIONS COMMISSION

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Rulemaking to Amend Part 1 and)
and Part 21 of the Commission's)
Rules to Redesignate the 27.5 -)
29.5 GHz Frequency Band and to)
Establish Rules and Policies for)
Local Multipoint Distribution)
Service)

CC Docket No. 92-297

RM-7872; RM-7722

TO: The Commission

REPLY COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

George Y. Wheeler
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April 15, 1993

Its Counsel

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SUMMARY

The comments show significant support for adoption of open eligibility, no set-asides, "local" MSA/RSA service areas and qualified lottery selection as the best means for rapidly and effectively deploying 28 GHz technologies. The public benefits from the adoption of these important incentives for participation by a numerous and diverse group of providers in the launch of LMDS Services include early implementation, development of diverse and innovative service applications of 28 GHz technologies and widespread availability of these technologies, particularly in rural and thinly populated areas.

We believe that the Commission's regulatory structure should also include appropriate safeguards of consumer rights under state and local regulatory oversight, afford regulatory parity among service providers determined on a service-by-service basis, and contain anti-speculation and anti-warehousing restrictions to deter speculative filings.

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TO: The Commission

REPLY COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries (collectively "TDS"), by its attorneys submits its reply comments in response to the Commission's Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration released January 8, 1993 in the above-captioned proceeding ("LMDS NPRM").¹

We agree with the numerous commenters who have identified at this very early stage of the development of 28 GHz technologies the distribution of wireless cable services as the most likely foreseeable use of 28 GHz technologies. Over time, however, we believe that other important uses will emerge for

¹ The abbreviated names used to refer to the comments filed by other parties are listed beside the full name of that party in the attached Certificate of Service.

"...different types of point-to-point and point-to-multipoint

DISCUSSION

1. Existing Telecommunications Providers Including LECs Should Be Eligible To Hold 28 GHz Licenses In Existing Markets As Well As Elsewhere.

We agree with the substantial number of commenters who supported LEC eligibility for licensing in their existing markets as well as elsewhere. We believe that broad participation of established service providers including LECs is essential to the early development of these technologies. The possible uses by the LEC industry of 28 GHz technologies logically should include video program distribution and many other services which will supplement or perhaps replace existing technologies used for video, voice and data services. There is every reason for existing telecommunications providers, including LECs, to have access to these advanced technologies to benefit the general public by making possible new diverse, innovative and cost-effective service capabilities.

2. There Should Be No Set-Asides Of Bandwidth Or Channel Capacity For Existing MMDS, Educational Institutions Or Other Interest Groups.

We strongly oppose the proposals of several commenters to set-aside 28 GHz spectrum for specified "interest" groups, such as existing MMDS licensees, educational broadcasters and others.

We agree with the Commission that the MMDS industry has had an important headstart and the benefit of rules changes intended to enhance the viability of wireless cable operations. There is every reason for these licensees to continue to develop and deploy their MMDS technologies as a cost-effective competitive alternative in the wireless cable market. The public interest would not be served by preemptively handing over 28 GHz spectrum to existing MMDS licensees and thereby diminishing competitive opportunities for others. Particularly at this early stage of the development of 28 GHz technologies, the Commission should not be foreclosing opportunities for new competitors in the wireless cable market to develop innovative and diversified service offerings.

We also oppose the set-aside proposals of educational and other groups as needlessly diminishing opportunities for the rapid and effective deployment of 28 GHz technologies. The educational and other interests requesting such set-asides indicate that their requirements are expected to develop over the next five to ten years. Two points should be made about these requirements. First, there is no reason to assume that cost-effective distribution capacity will not be available to meet these needs from any of a number of sources using wireline or wireless technologies. Second, ITFS frequencies will continue to be available for such services, and, in the event such frequencies are not deemed adequate for any reason, additional alloca-

tions should be proposed for consideration by the Commission. This proceeding is not the appropriate place to address such matters.

3. Service Areas Should Be Defined In Terms Of "Local" MSA/RSA Service Area Boundaries To Promote Development of Diverse "Locally" Oriented Service Offerings and Expanded Rural Service Options.

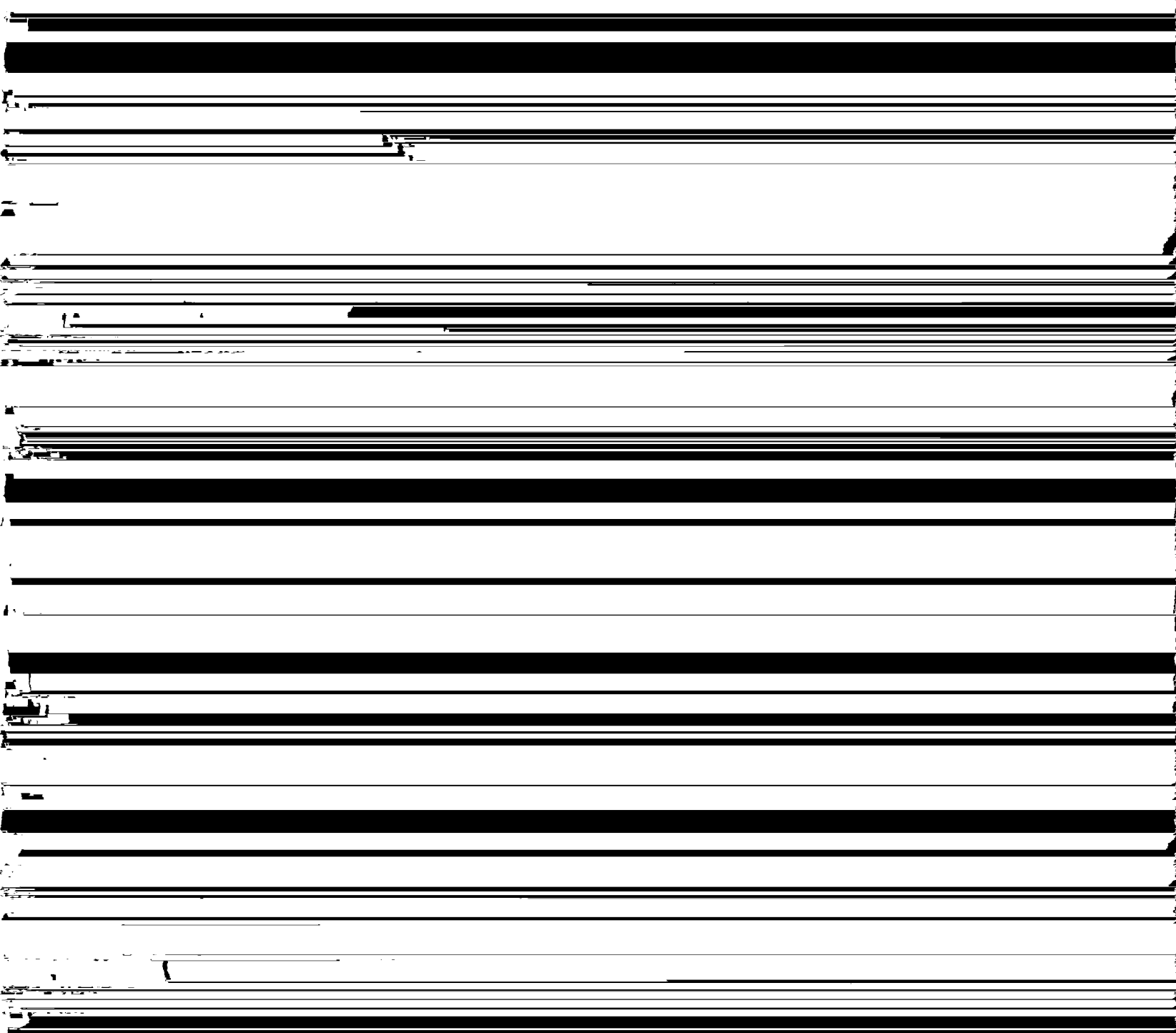
We agree with the substantial number of commenters including BellSouth, GTE, Rochester Telephone, Sprint and many others supporting adoption of "local" MSA/RSA service areas. Designation of "local" MSA/RSA service areas meets the Commission's concerns about capital cost and time required for rapid deployment of these new technologies, appropriate size in terms of economies of scale, established and easily identifiable boundaries, appropriate recognition of local "communities of interest," and the inherent short-range propagation characteristics of 28 GHz technologies.

The arguments supporting Basic Trading Areas ("BTAs") are cursory at best and fail to provide any substantial support. Ameritech, Bell Atlantic, Coalition and Video/Phone support BTAs without offering any supporting arguments. U.S. West states only that BTAs are an "appropriate" size.⁵ Equally cryptic comments

⁵ Comments of U.S. West, p. 10.

were filed by RSW which claims, without support, that BTAs promote "economies of scale."⁶

In view of the Commission's intention to promote rapid ~~deployment of a "new collection of FMDS services"~~ it is clear



4. Regulatory Classification Of The Diverse Uses Of 28 GHz Technologies Should Be Determined On A ~~Service-by-Service~~ Basis To Promote Regulatory Parity Among Service Providers.

We continue to support classification of LMDS as a common carrier service, leaving state jurisdiction of intrastate and local communications undisturbed provided that licensees, including LECs, should be permitted to offer channel capacity on a non-common carrier basis, including wireless cable services, unless prohibited by law.

We oppose the commenters who seem to be suggesting that the regulatory status of a provider should be based solely upon the "status election" of that provider. The determination of which services may be offered on a non-common carrier basis should be based upon their functional characteristics and the manner in which they are offered. The standards by which such determinations are made should be the same for all providers. We agree with BellSouth that such an election, particularly an election to operate on a non-common carrier basis, will be meaningless and counterproductive from a regulatory perspective unless the provider involved actually offers services which conform to the service classification standards consistently applied to all providers.¹²

¹² Comments of BellSouth, pp. 4-5.

5. The Role Of State And Local Regulatory Oversight To Protect And Defend Consumer Interests Should Be Preserved.

We strongly support the role of state and local regulatory oversight in the protection of consumer interests. As described above, 28 GHz technologies will be used for a broad range of "local" video, voice and data services. The fact that a provider uses 28 GHz technologies to provide a particular services does not and should not change the character of that service. Consumer rights under state and local regulatory protections should not be diminished for any regulated service simply because a provider chooses to use 28 GHz technologies.

6. Lottery Selection Is Needed To Preserve Realistic Licensing Opportunities For Small Business And Innovators And To Promote Rural Telecommunications Development.

We join with the vast majority of the commenters in supporting qualified lottery selection for the licensing of 28 GHz technologies. Lotteries are an efficient, cost-effective and prompt selection method, which should be adopted here, subject to adequate anti-speculation safeguards. We have already described in our comments the important public benefits of preserving realistic opportunities for innovators, small business and companies committed to rapid implementation of services in rural areas by adopting lottery selection procedures.

We oppose selection by spectrum auction because spectrum auctions create an unfair preference in the selection of licensees favoring applicants who have substantial net current assets and large established, particularly telecommunications related, businesses. These applicants can outbid otherwise highly qualified innovators, small businesses and rural service providers simply because their capital structure and existing business diminishes the risk factors which otherwise limit the bids of others who can not claim similar advantages.

The public loses under spectrum auctions because innovators

6. Strong Anti-Speculation And Anti-Warehousing Restrictions Should Be Adopted Including "Letter Perfect" Applications, Firm Financial Commitments, Requirements For Rapid Construction And A One-Day Filing Window.

We support strong anti-speculation and anti-warehousing requirements. With few exceptions, the commenters have broadly supported the Commission's proposed anti-speculation requirements. We also agree with the significant number of commenters who support free transferability of LMDS licenses upon grant. As stated in our Comments, even assuming that effective anti-speculation safeguards are in place, it is essential that a market mechanism be provided to permit licenses to be transferred to companies who will promptly implement 28 GHz technologies.

CONCLUSION

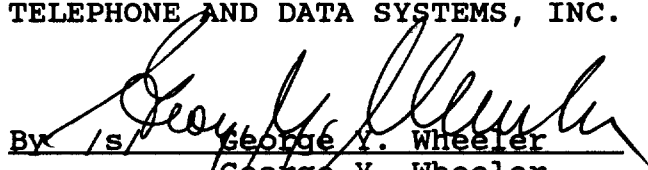
The redesignation of 28 GHz spectrum for LMDS services holds significant promise as a means of promoting competition in video program distribution market and development of new and innovative "local" video, voice and data offerings. Unlike PCS and some other technologies, the record here also suggests that much developmental work still needs to be accomplished.

We believe that adoption of a regulatory structure based upon MSA/RSA service areas, open eligibility, no set-asides, and lottery selection provides a properly balanced set of incentives

to accelerate the development and deployment of promising 28 GHz technologies. It is essential that innovators, small business and rural service providers have a fair opportunity to participate in the launch of 28 GHz technologies. We also recommend use of a service-by-service approach to regulatory classification to assure healthy regulatory parity, support for the continued right of state and local regulatory authorities to exercise their responsibilities, and adoption of the strong anti-speculation safeguards.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By  /s/ George Y. Wheeler
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April 15, 1993

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I, Abbie Weiner, a secretary in the law firm of Koteen & Naftalin, do hereby certify that a copy of the foregoing "Reply Comments of Telephone & Data Systems", was sent by first class U.S. mail, postage prepaid, on this 15th day of April, 1993 to the offices of the following: _____

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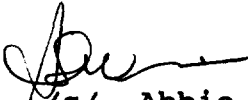
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